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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2013-0076, Sequence 6]

**Federal Acquisition Regulation; Federal Acquisition Circular  
2005-70; Introduction**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of interim rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005-70. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

**DATES:** For effective dates and comment dates see separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005-70 and the specific FAR case numbers. For information pertaining to status or publication

schedules, contact the Regulatory Secretariat at 202-501-4755.

**Rule Listed in FAC 2005-70**

<u>Item</u>	<u>Subject</u>	<u>FAR Case</u>	<u>Analyst</u>
I	Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (Interim)	2013-015	Corrigan
II	Allowability of Legal Costs for Whistleblower Proceedings (Interim)	2013-017	Chambers

**SUPPLEMENTARY INFORMATION:** Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005-70 amends the FAR as specified below:

**Item I—Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (FAR Case 2013-015)**

This interim rule amends the FAR to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at subpart 3.9. In accordance with FAR 1.108(d)(3), contracting officers are encouraged to include the changes in these rules in major modifications to contracts and orders awarded prior to the effective date of this interim rule. The pilot program is mandated by section 828, entitled "Pilot Program for Enhancement of Contractor Employee Whistleblower

Protections," of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013). This rule implements section 828 by amending FAR 3.900, Scope of subpart, to make FAR 3.901 through 3.906 inapplicable to DoD, NASA, and the Coast Guard and to prohibit the use of these sections for new awards by all other agencies subject to the FAR (title 41 agencies) through January 1, 2017. This rule creates a new FAR section 3.908 to be used by title 41 agencies through January 1, 2017. Other exceptions: FAR 3.907, which addresses whistleblower protections under the American Recovery and Reinvestment Act of 2009, is unaffected by this rule. This rule does not provide any right not otherwise provided by law to disclose classified information, nor does it apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)(4)). In addition, the interim rule applies to actions over the simplified acquisition threshold.

**Item II-Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013-017)**

This interim rule amends the FAR by revising the cost principle at 31.205-47 to implement sections 827(g) and 828(d) of the NDAA for FY 2013 (Pub. L. 112-239). There are two new whistleblower programs for contractor and

subcontractor employees, at 10 U.S.C. 2409 and 41 U.S.C. 4712. The latter program is a pilot program, being addressed in FAR Case 2013-015, amending FAR subpart 3.9. The cost principle addresses the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower protection proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower statute. Because most contracts awarded to small businesses use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, thus limiting their exposure to the cost principles, the impact of this interim rule on small businesses will be minimal.

**Dated:** September 24, 2013.

William Clark,  
Acting Director,  
Office of Government-wide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005-70 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-70 is effective [***INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER***].

**Dated: September 23, 2013.**

**Richard Ginman,**  
Director, Defense Procurement  
and Acquisition Policy

**Dated: September 24, 2013.**

**Houston Taylor,**  
Acting Senior Procurement Executive/Deputy CAO,  
Office of Acquisition Policy,  
U.S. General Services Administration.

**Dated: September 23, 2013.**

**William P. McNally,**  
Assistant Administrator for Procurement,  
National Aeronautics and Space Administration.

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